

CANADIAN ARCTIC RESOURCES COMMITTEE
PREPARED EVIDENCE
ORDER OH-2-80
A.R. THOMPSON

Legal Questions
Re: Pipeline

1. 1. Q. Dr. Thompson, will you please state your address and
2. occupation?

3.
4. A. I am a Professor of Law and Director of the Westwater
5. Research Centre at the University of British Columbia in
6. Vancouver. I am also Chairman of the Canadian Arctic Resources
7. Committee.

8.
9. 2. Q. Please describe for the Board your educational and profes-
10. sional experience.

11.
12. A. I graduated with a Bachelors Degree in Law from the University
13. of Manitoba in 1948, received a Masters in Law from the University
14. of Toronto in 1954, and a Doctorate in Law (JSD) at Columbia
15. University in New York in 1967. I have taught at the universities
16. of Toronto, Alberta, Auckland, and British Columbia. I served as
17. Chairman of the British Columbia Energy Commission between 1973 and
18. 1976. In 1977, I was appointed Commissioner of the West Coast
19. Oil Ports Inquiry to ascertain the environmental and social impacts
20. of establishing a deep water oil port on the west coast.

21.
22. I have published extensively in legal journals on Canadian oil and
23. gas law topics and am co-author of Lewis and Thompson, Canadian Oil
24. and Gas (Butterworth's).

25.
26. 3. Q. Why does the Canadian Arctic Resources Committee oppose the
27. Norman Wells pipeline at this time?

28.
29. A. CARC opposes it for two main reasons, although we do have a
30. number of other concerns as well - one of these being the distribution

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of the project's economic benefits. We oppose the pipeline, first, because we believe it would prejudice the aboriginal claims of the Dene. We have no doubt that the achievement of a just settlement and implementation of the Dene claim is more important to the future of the Northwest Territories and Canada than is a pipeline.

Second, we oppose the pipeline because Interprovincial fails to address the environmental, economic, and social consequences of establishing a pipeline corridor in the Mackenzie Valley. We can expect future pipelines from the Mackenzie Delta/Beaufort Sea region to follow this corridor, thereby imposing cumulative and synergistic impacts along the right-of-way Interprovincial chooses. We believe that these impacts must be taken into consideration in making an initial decision which may set the future course of development.

4. Q. Dr. Thompson, I note that CARC qualifies its opposition to the project by adding the phrase "at this time." What does CARC mean by "at this time"?

A. What we mean is that CARC does not oppose the principle of the pipeline's construction per se. Provided certain conditions are met, we believe that the pipeline will be in the national interest as well as in the interest of northerners. It is important that these conditions be met, even if they entail delay in the pipeline's completion.

5. Q. Can Canada afford a delay in the pipeline's completion given that we already import growing volumes of oil?

A. Yes. The Norman Wells pipeline will not eliminate dependence on oil imports. Indeed, it will hardly make a dent in Canada's overall oil supply/demand balance, meeting as it will, only one

1. to two per cent of domestic requirements. There is therefore
 2. no pressing urgency to proceed with this pipeline. The only
 3. immediate direct benefits will accrue to Esso, Interprovincial,
 4. and the Government of Canada. Together with savings in foreign
 5. payments, this is a poor excuse for failing to deal with pressing
 6. issues of social justice and nation-building.

7.
 8. 6. Q. Can you please review the factors which require a delay?

9.
 10. A. Perhaps the most important of these is the local opposition
 11. to the project at this time. The members of the Executive
 12. Committee of the Northwest Territories representing the demo-
 13. cratically-elected government of the Territories, the Dene Nation,
 14. and the Metis Association of the N.W.T. have all stated that they
 15. wish this project to be delayed. CARC submits that only a compel-
 16. ling national interest should override the unanimous views of the
 17. people most directly affected by this application. This compelling
 18. national interest, as I have stated earlier, does not exist in this
 19. case.

20.
 21. We concur with the Dene in their opposition to this project. They
 22. oppose it because it would prejudice their claims, which, as
 23. has been pointed out before both this Board and the Mackenzie
 24. Valley Pipeline Inquiry, concern more than the ownership of the
 25. land: they concern the fundamental relationship of the Dene to the
 26. people of Canada. In his report, Judge Berger summarized the
 27. issue in these words:

28.
 29. ...will native claims be rendered more difficult or even
 30. impossible of achievement if we build a pipeline with-
 31. out first settling those claims? Must we establish
 32. the political, social and economic institutions and
 33. programs embodied in the settlement before building
 34. a pipeline? Unless we do, will the progress of the

1. native people toward realization of their goals be
2. irremediably retarded? I think the answer clearly is
3. yes. The progress of events, once a pipeline is under
4. construction, will place the native people at a grave
5. disadvantage, and will place the government itself in
6. an increasingly difficult position.

7.
8. In my opinion a period of ten years will be required in
9. the Mackenzie Valley and Western Arctic to settle native
10. claims, and to establish the new institutions and new
11. programs that a settlement will entail. No pipeline
12. should be built until these things have been achieved
13. (Vol. 1, p. 196).

14.
15. In its Decision Northern Pipelines (July, 1977), the National
16. Energy Board agreed that "the Dene might lose more than they would
17. gain by a pipeline development in the immediate future" and that
18. "a pipeline project could impose on the Dene population of the
19. Mackenzie Valley unfavourable impacts for which it may not be
20. possible to compensate" (Vol. 3, pp. 200,207). The Board rejected
21. the Canadian Arctic Gas Pipeline application, in part because
22. it was "based on incompatible time constraints; on the one hand
23. the urgent need to connect Alaska gas to United States markets,
24. and on the other, the need for more time to resolve socio-economic
25. concerns before a pipeline could be built along the Mackenzie
26. Valley" (Vol. 1, pp. 1-164, 1-165).

27.
28. No such "incompatible time constraints" exist today in the
29. Mackenzie Valley. CARC submits, therefore, that the construction
30. of the Norman Wells pipeline must be delayed.

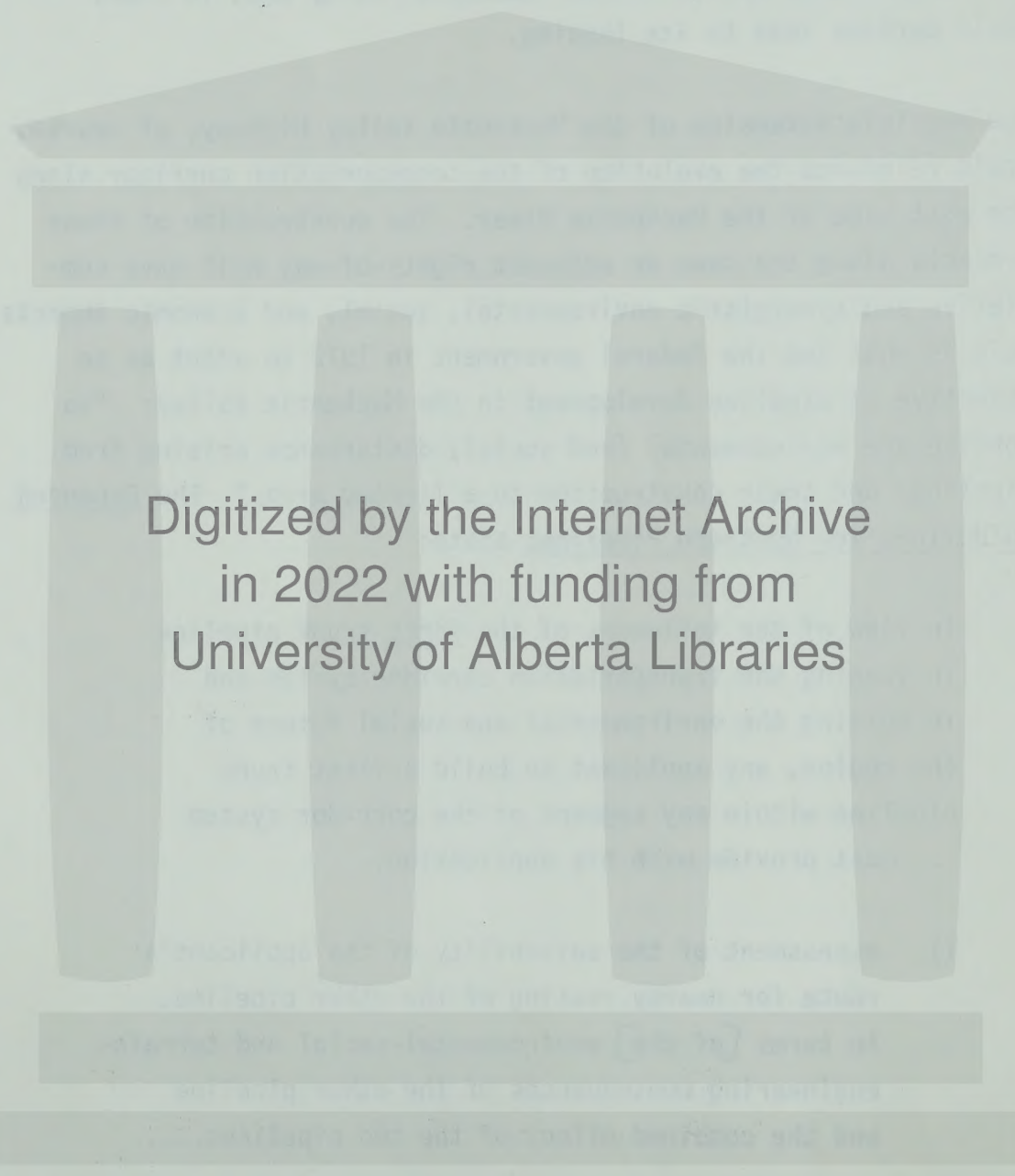
31.
32. Another factor which leads CARC to argue for a delay is that the
33. project is being developed in a policy vacuum. The Norman Wells
34. pipeline will establish a corridor for any future pipelines from

the Mackenzie Delta/Beaufort Sea. If an oil pipeline from the Delta is built, the Norman Wells pipeline may be integrated into its design. A Mackenzie Valley gas pipeline is also a possibility. Indeed, this is one of the alternatives Polar Gas is considering. The construction of any pipeline could be expected to stimulate oil and gas exploration in the Mackenzie Valley and, in time, could perhaps lead to its looping.

The possible extension of the Mackenzie Valley highway, of course, would reinforce the evolution of the transportation corridor along the east side of the Mackenzie River. The construction of these projects along the same or adjacent rights-of-way will have cumulative and synergistic environmental, social, and economic impacts. This is what led the federal government in 1972 to adopt as an objective of pipeline development in the Mackenzie Valley: "to confine the environmental (and social) disturbance arising from pipelines and their construction to a limited area." The Expanded Guidelines for Northern Pipelines state:

In view of the influence of the first trunk pipeline in shaping the transportation corridor system and in molding the environmental and social future of the region, any applicant to build a first trunk pipeline within any segment of the corridor system ... must provide with his application:

- i) assessment of the suitability of the applicant's route for nearby routing of the other pipeline, in terms [of the] environmental-social and terrain-engineering consequences of the other pipeline and the combined effect of the two pipelines....
- ii) assessment of the environmental-social impact of both pipelines on nearby settlements or nearby existing



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1. or proposed transportation systems; and
2.

3. iii) comparison of the applicant's proposed route with
4. alternative pipeline routes, in terms of environ-
5. mental and social factors as well as technical and
6. cost considerations.... (p. 8)
7.

8. The Applicant has not met this guideline.
9.

10. CARC believes that it is absolutely essential that the Norman
11. Wells pipeline be planned, designed, and built to accommodate any
12. future Mackenzie pipelines, and to minimize their negative impacts.
13. This is not an unfair burden to impose on the Applicant, particu-
14. larly since it has already completed some work through the
15. Beaufort/Delta oil project, which studied the construction of an
16. oil pipeline from the Mackenzie Delta in the mid-1970s. Furthermore,
17. the Applicant can draw from the voluminous information generated
18. by the Foothills Pipe Lines and the Canadian Arctic Gas Pipeline
19. applications.
20.

21. The third reason why CARC believes that the project should not
22. proceed under current conditions concerns the distribution of
23. economic benefits. It is clear that this project would provide
24. far greater financial benefit to Canada as a whole than it would
25. to the North. Indeed, under the present fiscal arrangements,
26. the North is unlikely to benefit very much from the project.
27. Almost all the government revenues generated by the project will
28. accrue to governments other than that of the N.W.T. Similarly,
29. industry's revenues will flow to corporations outside the N.W.T.
30. Southern Canadians will benefit by gaining access to a new source
31. of oil at less than world prices. Thus, whereas the bulk of the
32. project's long-term costs - primarily its environmental and socio-
33. economic impacts - will be concentrated in the North, the over-
34. whelming share of its benefits will be gained in the South. The

Applicant's economic analysis of the project illustrates this point quite well: its entire thrust is directed to calculating the national benefits of developing the Norman Wells field.

It is not surprising that the N.W.T. government has decided to oppose this project until it receives a greater share of the benefits. Given that the project will impose additional costs on the N.W.T., this is not an unreasonable position, and it is one that CARC supports fully.

Q. Do you have any other concerns Dr. Thompson?

A. Yes, I do. They relate to the conflict of interest in which the Department of Indian Affairs and Northern Development finds itself. The department has a special responsibility to the native people of the North. That responsibility was recognized in the government's northern policy statement, Canada's North 1970-1980, which states that "the needs of the people in the North are more important than resource development and that the maintenance of ecological balance is essential" (p. 6). This policy was reaffirmed in May 1977 by the Hon. Warren Allmand, then the Minister of Indian and Northern Affairs:

It is basic to the government's current Indian and northern policy that self-government, education, municipal services and economic development in native communities should reflect native values and take into account suggestions advanced by communities themselves. This is a key consideration in the negotiations of comprehensive land claims.... (p. 5)

Construction of the Norman Wells pipeline cannot help but prejudice the Dene position in their claim negotiations. Indeed, it could set the negotiations back for years. Yet, the Department of

1. Indian Affairs and Northern Development, responsible for advancing
2. native interests, stands to be one of the main beneficiaries of
3. the Norman Wells expansion as a result of its one-third net carried
4. financial interest in the field. The department cannot expect to
5. negotiate a fair claims settlement while participating financially
6. in a project which forecloses those claims.

7.
8. The government has a simple choice. It can ignore its responsibil-
9. ity to native peoples and approve the pipeline now, or it can
10. delay the pipeline and get on with the settlement of claims. One
11. way or the other, the government will demonstrate whether its de-
12. clared policy in favour of native peoples is real or a façade.


13.
14. 8. Q. What does the Canadian Arctic Resources Committee recommend
15. then?

16.
17. A. We have two main recommendations. First, we recommend that the
18. Board delay issuance of a Certificate of Public Convenience
19. and Necessity to Interprovincial Pipe Line until the company has
20. complied with the 1972 Pipeline Guidelines. We submit that in
21. the absence of evidence concerning the creation of a transportation
22. corridor in the Mackenzie Valley and the cumulative environmental
23. and socio-economic impacts that such a corridor would entail, it is
24. impossible at this time to formulate an opinion on Interprovincial's
25. public convenience and necessity.

26.
27. We recommend therefore that the Board request IPL to assess the
28. suitability of its proposed route for the nearby routing of one or
29. more other pipelines, in terms of the environmental, social, and
30. terrain engineering consequences of other pipelines. Such
31. assessment should include an analysis of the cumulative environ-
32. mental and social impacts of building several pipelines in the
33. same corridor.
34.

1. Section 17 of the National Energy Board Act provides that the
2. Board may rehear an application before deciding it. We submit that
3. the Board hear this matter before coming to a final conclusion on
4. the application.

5.
6. Our second recommendation is that the Board rule, as it did three
7. years ago in its Northern Pipeline decision, that until there is a
8. settlement of the Dene claim, it is not in the public interest to
9. proceed with the Norman Wells pipeline.



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